United Nations A/HRC/RES/28/16

General Assembly

Distr.: General
1 April 2015

Original: English

Human Rights Council
Twenty-eighth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Resolution adopted by the Human Rights Council

28/16. The right to privacy in the digital age

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and relevant international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

Recalling the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming the Vienna Declaration and Programme of Action,

Recalling its resolutions 5/1, on institution-building of the Human Rights Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Recalling also General Assembly resolutions 68/167 of 18 December 2013 and 69/166 of 18 December 2014 on the right to privacy in the digital age, and Human Rights Council decision 25/117 of 27 March 2014 on the panel on the right to privacy in the digital age,

Recalling further its resolutions 20/8 of 5 July 2012 and 26/13 of 26 June 2014 on the promotion, protection and enjoyment of human rights on the Internet,

Welcoming the work of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age, noting with interest its report

thereon,[1] and recalling the panel discussion on the right to privacy in the digital age held during the twenty-seventh session of the Human Rights Council,[2]

Taking note of the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[3] and the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,[4]

Noting with appreciation general comment No. 16 of the Human Rights Committee on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation,[5] while also noting the vast technological leaps that have taken place since its adoption,

Recalling that the General Assembly in its resolution 69/166 encouraged the Human Rights Council to remain actively seized of the debate on the right to privacy in the digital age, with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy, and to consider the possibility of establishing a special procedure to that end,

Recognizing the need to further discuss and analyse, on the basis of international human rights law, issues relating to the promotion and protection of the right to privacy in the digital age, procedural safeguards, effective domestic oversight and remedies, the impact of surveillance on the right to privacy and other human rights, as well as the need to examine the principles of non-arbitrariness and lawfulness, and the relevance of necessity and proportionality assessments in relation to surveillance practices,

Reaffirming the human right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, and recognizing that the exercise of the right to privacy is important for the realization of the right to freedom of expression and to hold opinions without interference and the right to freedom of peaceful assembly and association, and is one of the foundations of a democratic society,

Noting that the rapid pace of technological development enables individuals all over the world to use new information and communications technology and at the same time enhances the capacity of governments, companies and individuals to undertake surveillance, interception and data collection, which may violate or abuse human rights, in particular the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, and is therefore an issue of increasing concern,

Noting also that, while metadata can provide benefits, certain types of metadata, when aggregated, can reveal personal information and can give an insight into an individual's behaviour, social relationships, private preferences and identity,

Emphasizing that States must respect international human rights obligations regarding the right to privacy when they intercept digital communications of individuals

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[1] A/HRC/27/37.

[2] See A/HRC/28/39.

[3] A/69/397.

[4] A/HRC/23/40 and Corr.1.

[5] *Official Records of the General Assembly, Forty-third Session, Supplement No. 40* (A/43/40), annex VI.

and/or collect personal data and when they require disclosure of personal data from third parties, including private companies,

Recalling that business enterprises have a responsibility to respect human rights as set out in the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[6]

Deeply concerned at the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights,

Noting with deep concern that, in many countries, persons and organizations engaged in promoting and defending human rights and fundamental freedoms frequently face threats and harassment and suffer insecurity as well as unlawful or arbitrary interference with their right to privacy as a result of their activities,

Noting that, while concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law,

Noting also in that respect that the prevention and suppression of terrorism is a public interest of great importance, while reaffirming that States must ensure that any measures taken to combat terrorism are in compliance with their obligations under international law, in particular international human rights, refugee and humanitarian law,

1. *Reaffirms* the right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights;

2. *Recognizes* the global and open nature of the Internet and the rapid advancement in information and communications technology as a driving force in accelerating progress towards development in its various forms;

3. *Affirms* that the same rights that people have offline must also be protected online, including the right to privacy;

4. *Decides* to appoint, for a period of three years, a special rapporteur on the right to privacy, whose tasks will include:

(*a*) To gather relevant information, including on international and national frameworks, national practices and experience, to study trends, developments and challenges in relation to the right to privacy and to make recommendations to ensure its promotion and protection, including in connection with the challenges arising from new technologies;

(*b*) To seek, receive and respond to information, while avoiding duplication, from States, the United Nations and its agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society organizations, the private sector, including business enterprises, and any other relevant stakeholders or parties;

(*c*) To identify possible obstacles to the promotion and protection of the right to privacy, to identify, exchange and promote principles and best practices at the national, regional and international levels, and to submit proposals and recommendations to the

[6] A/HRC/17/31, annex.

Human Rights Council in that regard, including with a view to particular challenges arising in the digital age;

(*d*) To participate in and contribute to relevant international conferences and events with the aim of promoting a systematic and coherent approach on issues pertaining to the mandate;

(*e*) To raise awareness concerning the importance of promoting and protecting the right to privacy, including with a view to particular challenges arising in the digital age, as well as concerning the importance of providing individuals whose right to privacy has been violated with access to effective remedy, consistent with international human rights obligations;

(*f*) To integrate a gender perspective throughout the work of the mandate;

(*g*) To report on alleged violations, wherever they may occur, of the right to privacy, as set out in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, including in connection with the challenges arising from new technologies, and to draw the attention of the Council and the United Nations High Commissioner for Human Rights to situations of particularly serious concern;

(*h*) To submit an annual report to the Human Rights Council and to the General Assembly, starting at the thirty-first session and the seventy-first session respectively;

5. *Invites* the Special Rapporteur to include in the first report considerations that the mandate holder finds relevant to address the right to privacy in the digital age;

6. *Calls upon* all States to cooperate fully with and to assist the Special Rapporteur in the performance of the mandate, including by providing all necessary information requested by him or her, to respond promptly to his or her urgent appeals and other communications, to consider favourably the mandate holder's requests to visit their countries and to consider implementing the recommendations made by the mandate holder in his or her reports;

7. *Encourages* all relevant stakeholders, including the United Nations and its agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, civil society and the private sector to cooperate fully with the Special Rapporteur to enable the mandate holder to fulfil the mandate;

8. *Requests* the Secretary-General and the High Commissioner to provide the Special Rapporteur with all the human and financial resources necessary for the effective fulfilment of the mandate;

9. *Decides* to continue its consideration of the matter under the same agenda item.

56th meeting
26 March 2015

[Adopted without a vote.]